

**JOINT CITY COUNCIL SPECIAL & REGULAR MEETING AND
REDEVELOPMENT AGENCY SPECIAL MEETING
MINUTES - APRIL 17, 2002**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:31 p.m.

ROLL CALL ATTENDANCE

Present: Mayor/Agency Chair Dennis Kennedy
Council/Agency Members Carr, Sellers, Tate
Late: Council/Agency Member Chang arrived at 6:45 p.m.

DECLARATION OF POSTING OF AGENDA

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority:	Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)
City Negotiators:	Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel
Case Name:	San Jose Christian College v. City of Morgan Hill
Case Numbers:	USDC Northern California No. C01-20857 RMW
Closed Session Topic:	Potential Existing Litigation/Real Estate Negotiations

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Initiation of Litigation	
Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Government Code section 54956.9(a)
Name of Cases (3) :	Santa Teresa Citizen Action Group et al. v. Environmental Appeals Board of the United States EPA ; Santa Teresa Citizens Action Group et al. v. California Energy Commission ; Santa Teresa Citizens Action Group et al. v. California Energy Commission ;
Case No/Court (3) :	Ninth Circuit Court of Appeals, No. 01-71611; Sacramento County Superior Court Civil No. 01 CS 01830; California Supreme Court Case No. S 103019
Attendees :	City Manager; City Attorney; Stephan Volker, Special Counsel.

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Government Code section 54956.9(a)
Name of Case :	City of Morgan Hill v. Panwala
Case No/Court :	Superior Court of Santa Clara County; Case Number CV794195
Attendees:	City Manager; City Attorney

5.

CONFERENCE WITH LEGAL COUNSEL: EXISTING LITIGATION

Authority:	Government Code section 54956.9(a)
Case Name/No.:	Ameron International Corporation v. City of Morgan Hill; Santa Clara County Superior Court Case No. CV 772368

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session Items to public comment.

There being no public comment, Mayor/Chairman Kennedy closed the public comment.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:32 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:02 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that the closed session items had been continued until after the regular meeting.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairman Kennedy invited Ms. Mary Ellen Salzano to lead the Pledge of Allegiance.

PRESENTATION

South County Collaborative was scheduled to make a presentation to the Council this evening, but Ms. Deb Smith, of that office informed staff by telephone that this item would not be heard at this meeting due to illness of those who were scheduled to make the presentation. South County Collaborative will reschedule this presentation for a later date.

PROCLAMATIONS

- a) Project Sentinel did not have a staff member present to receive this proclamation in honor of the 34th Anniversary of the Federal Fair Housing Act, and proclaiming April 2002, as Fair Housing Month in affirmation of the goal of equality of opportunity in housing choices for all residents of Morgan Hill. Project Sentinel has served Morgan Hill for many years by performing educational and enforcement services to affirmatively further fair housing.
- b) Mayor Kennedy presented to Dr. Oscar Battle, of the American Cancer Society, with a proclamation stating that March, 2002, has been designated as Colorectal Cancer Awareness Month, and affirming that the City of Morgan Hill is committed to informing employees and residents about the risk factors and available precautions that can be taken to fight the disease.

Dr. Battle thanked the Council for their efforts and sensitivity in talking about this matter. He stated that educating this community is a positive step and his organization is hopeful that other communities will join in this educational effort.

- c) Community Solutions representative Hugo Robles, received from Mayor Kennedy a proclamation stating that the month of April 2002, has been proclaimed as Sexual Assault Awareness Month.

Mr. Robles thanked the City.

RECOGNITIONS

Emergency Services Coordinator, Ms. Debbie Simon, appeared before the Council to introduce and administer the Oath of Office to 34 Disaster Services Workers for the City of Morgan Hill. She noted that these volunteers have given a great deal of valuable time and energy to train to be able to provide disaster services to the Morgan Hill community, if the need should arise.

Ms. Simon introduced each volunteer, and then administered the Oath of Office to the group. Volunteers were: Patricia Andrade, Cynthia Bunch, Charles Cameron, Lori Chaykin, Richard Diaz, Darcy Foster, Gary Goelkel, Kathy Goelkel, Alejandra Gomez, Preston Higgins Jr., Bob Kelly, Donna Krein, John Liegle, Kathryn Liebschutz, Lynn Liebschutz, Jan Masuda, Carolyn Murray, Pam Rhoten, Wayne Rhoten, Bob Roma, Linda Roma, Mary Ellen Salzano, Paul Staudenmaier, Rebecca Staudenmaier, Deborah Suzuki, Dale Thrasher, and Ray Wadman. She thanked them for the time they have given, and thanked their families for the sacrifices they have made in allowing these volunteers to participate in this program.

Mayor Kennedy also thanked them for all they do, and commended their tremendous service to the community. He also invited anyone in the listening audience who wished to become involved in this program to contact Ms. Debbie Simon at the Morgan Hill Police Department.

OTHER REPORTS

City Treasurer, Mike Roorda, presented a report to the Council on the Finance & Audit Committee Meeting held earlier in the evening. He thanked the Council for scheduling this type of presentation on a monthly basis.

He reported that the fiscal year to date has been a challenging year, but city departments have done well in meeting those challenges.

Revenue has not met budgeted projections, mainly because of lower hotel and sales tax revenues. These revenues have fallen short of projections, and are not expected to meet budgeted projections. Other areas, like license fees and franchise fees, have done better; but the substantial loss in revenue from hotel and sales tax will have a significant impact.

Because of this, the Council already directed a 5 percent reduction in spending for all departments earlier this fiscal year. Departments have responded well, and in some areas, have exceeded the 5 percent reduction. Because the General Fund has grown over the last few years, it will help us weather current poor economic climates. He recommended care in planning for our revenue growth and expenses in the next fiscal year budget process.

In response to the Mayor's inquiry, Mr. Roorda informed the Council that investments of a long term nature are managed by the State of California in a pool of funds deposited by agencies across the state. City funds receive a higher rate of interest than could be obtained if they were not pooled with other agencies. These are very safe investments, and put funds that are not immediately needed, into long term growth to bring a higher yield to the city.

Mayor Kennedy thanked him for his report.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the meeting to public comment for items not on this agenda..

There being no public comment, Mayor/Chairman Kennedy closed the public comment.

City Council Action

CONSENT CALENDAR:

Council Member Sellers stated that he wished to make a comment on Item #5, after the vote. He also requested that Item #7 be pulled for a separate vote on that item.

Action: *On a motion by Council Member Tate, and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1 - 6, as follows:*

- 1) **MARCH 2002 FINANCE AND INVESTMENT REPORT**
*Action: **Accepted and Filed** Report.*
- 2) **AWARD OF CONTRACT FOR MAIN AVENUE WELL DRILLING**
*Action: **Awarded** Contract to Maggiora Brothers Drilling for the Construction of the Main Avenue Well Drilling Project in the Amount of \$103,879.*
- 3) **AWARD OF CONTRACT FOR POLYBUTYLENE WATER SERVICE REPLACEMENT PROJECT, PHASE IV**
*Action: **Awarded** Contract to Vulcan Construction and Maintenance, Inc. for the Construction of the Polybutylene Water Service Replacement Project, Phase IV in the Amount of \$329,777.*
- 4) **EXTENSION OF AGREEMENT AND EXTRA PAYMENT AUTHORIZATION FOR CONTRACT WITH WESTON MILES ARCHITECTS**
*Action: 1) **Appropriated** \$12,005.65 from Our Unappropriated Public Facilities Impact Fee Fund (347) for These Services; and 2) **Approved** an Extension of the Contract with Weston Miles Architects for Completion of Work Associated with the West Annex and City Hall Renovation Project*
- 5) **COMMUNITY AND CULTURAL CENTER PROJECT MARCH CONSTRUCTION PROGRESS REPORT**

Council Member Sellers expressed his concern about the delays caused by an order of materials. He expected to see delays due to natural causes, but is disconcerted about this materials delay. Asked for clarification, and if there are any other such delays anticipated.

Director of Public Works Ashcraft stated that this delay was caused by a problem in ordering of the structural steel. The steel has now arrived and has been installed. The department is in the process of investigating to determine whether the architect or the contractor was responsible for this delay. He will report back to the Council when it is determined what caused the delay and whether there will be any monetary compensation owed to the city.

Council Member Chang and Mayor Kennedy reported that they had received very positive comments from the community on the progress of the project.

*Action: **Information Only.***

- 6) **CONSULTANT AGREEMENT - DU-ALL SAFETY**
*Action: **Authorized** the City Manager to Execute a Contract Up to a Maximum Amount of \$60,000 with Du-All Safety Incorporated, for the Provision of Safety Program Support and Training through June 30, 2003, Subject to City Attorney Review.*

7) **ZONING AMENDMENT APPLICATION, ZA-01-05: MONTEREY - SOUTH VALLEY DEVELOPERS**

Action: *On a motion by Council Member Tate, and seconded by Council Member Carr, the City Council voted (4-1-0) AYES: Chang, Kennedy, Tate, Carr; NOES: Sellers; ABSTAIN: None **Approved** Negative Declaration dated February 6, 2002; and 2) **Directed** City Clerk to Replace Negative Declaration dated December 4, 2001, with Negative Declaration dated February 6, 2002.*

City Council and Redevelopment Agency Action

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency unanimously (5-0) **Approved** Consent Calendar Item 8, as follows:*

8) **APPROVE JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR APRIL 3, 2002**

Action: ***Approved** as written.*

City Council Action

PUBLIC HEARINGS:

9) **ZONING AMENDMENT APPLICATION, ZA-01-22: PEAK AVENUE - VILLA HEIGHTS**
Continued from 4/3/02

Planning Manager Rowe presented the staff report. He reported that this item was before Council at their April 3, 2002, meeting, at which time the Council requested that staff investigate if there were any previous restrictions that had been placed on the property at the time of approval of the adjacent 99-bed facility. He reviewed the staff report as provided to Council in their packets.

Mr. Rowe stated that some of the neighbors are concerned that this zoning change to R-3 would allow the development of apartments on this site. He stated that the R-3 designation was a conditional zoning to allow for the 99-bed convalescent hospital, and that this zoning designation had also made Villa Heights a conforming use.

The amendment before the Council allows for an increase in the number of beds allowed at Villa Heights to 28 beds. Area residents have expressed concern about this increase and expansion of the facility. Mr. Rowe wanted to assure residents that it is staff's opinion that the increase in the number of beds will not result in overcrowding or expansion of this facility. This facility was originally licensed by the State for a

total of 32 beds, and has been operating at a lower level, because their staffing levels would not support more beds.

In response to Mayor Kennedy's question, Mr. Rowe stated that he is not aware of any problems that have been reported related to this facility. Licensing agencies have approved this facility for 28 beds, and have determined that this facility conforms to the State requirements for access and staffing support. The Fire Department has also given their approval.

Mayor Kennedy opened the public hearing.

Mr. Jon McClelland introduced himself as a neighbor living at 410 Farallon Drive. He stated that his concern is that the last time the facility was providing services at this level, it was decided to reduce this facility's bed count to 15 and build the other 99-bed facility. He stated he does not want to see the facility in a situation where it would be overcrowded and need to expand. Wants language that prevents future expansion of the facility. He is concerned about build-up of the area. There is already the large facility, and does not want another large facility built on this lot.

Mr. Rigoletto Caron, introduced himself as a neighbor at 17145 Peak Avenue. He stated he has no problem with Villa Heights. Villa Heights lets him park on their property when he has an overflow of traffic at his house.

Mr. James Albertson, introduced himself as the operator of Villa Heights, the facility making application for this amendment. He stated that he had no plans to expand. Licensing only allows a maximum of two beds per room. He realizes that there might be a parking problem on Peak Avenue, but feels that he can help provide a solution to the problem. He has allowed neighbors to park their cars on Villa Heights property as needed, and also allows parking for neighborhood weddings. He stated there are no plans to expand, and feels it would not be possible with the slope of the hill.

Mayor Kennedy asked him how can he fit two beds into each room, since some of the rooms don't look that large.

Mr. Albertson responded that they may not. It will depend on the size of the room. They will follow the standards set by the State licensing agency and the fire department. The State has licensed the facility for 28 beds, and the Fire Marshall has approved. He also stated that he knows that there are other facilities in town that have more beds. His request is a legally allowable usage. The smallest room has 2 beds. If a room is too small, they would not put another bed in that room.

Council Member Carr stated that it sounds like this is a request being made because of demand from people who want to be in rooms with another bed, so they can have a less expensive room.

Mr. Albertson responded that, yes, that is the case. It allows them to set the cost per person in those rooms at a lower rate.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment Ordinance.*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council **Introduced** the Zoning Amendment Ordinance, by Title Only, as follows:
An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance 576, New Series, to Allow an Increase in the Number of Occupants of the Senior Care Facility Located at 17090 Peak Avenue from 15 to 28 Beds by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**10) ANNEXATION AND ZONING AMENDMENT APPLICATIONS, ANX-02-01/ZA-02- 01:
COCHRANE - BORELLO I**

Planning Manager Rowe presented the staff report. Stated that applicant also owns the property to the south, but is not planning to annex it to the city at this time. A future annexation will be brought on this property. Currently only asking for approval of the pre-zoning.

Mayor Kennedy noted that there is a pumping station on the property next to it on the south side.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **Tabled** ANX-02-01: Cochrane-Borello I.*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Negative Declaration.*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment Ordinance.*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council **Introduced** the Zoning Amendment Ordinance, by Title Only, as follows:
An Ordinance of the City Council of the City of Morgan Hill Pre-zoning 14 Acres, Located on the West Side of Peet Road - Between Cochrane Road and Half Road from County A-20s to City R-1(12,000). [APN 728-34-002] by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**11A) ZONING AMENDMENT AND DEVELOPMENT AGREEMENT ZA 01-18 & DA 01-09:
MCLAUGHLIN- JONES**

Council Member Chang, because of a property interest within 500 feet of this property, recused herself and stepped down from the dias.

Council Member Sellers announced that because this issue does not impact his neighborhood, which is near this property, he need not recuse himself, so he stayed at the dias.

Planning Manager Rowe informed the Council that if they decide to approve the two resolutions presented in this item 11A), they would be in concurrence with the denial by the Planning Commission. If that is their decision, then the Council would not have to take any action on item 11B). He then reviewed all the issues as detailed in the staff report in the Council packet.

He noted that the Planning Commission felt that if the applicant was willing to come back with a new subdivision map and an RPD to cover the entire site, then they could recommend approval.

Council Members discussed the differences between competing in the Micro Measure P competition and the Small Projects Measure P competition. They noted that the Small Projects competition is more difficult than the Micro Measure P competition because it is more competitive, but stated that it appeared that if this project wants to build more than its Micro Measure P allotment of 5 units, it needed to compete under the Measure P Small Projects competition.

Mayor Kennedy asked if it was the staff and City Attorney's position that the applicants two options are to accept the allocations already received; or not accept these, and resubmit as an RPD for the entire project.

City Attorney Leichter stated that a third option is to transfer the property ownership to another party for development.

Mr. Rowe responded to Mayor Kennedy's question about safety clearance from the railroad tracks, stating that the plan creates a common area that will serve as a buffer between the homes and the tracks. This buffer also eliminates the need for a sound wall. Mayor Kennedy stated that he would not like to see a sound wall built, and with the buffer area there is little land left for further development.

Mr. Rowe reported that if the owner wants to proceed with his expanded 9-unit plan, he needs more allocations than he already has, and would need to go into the Measure P Small Projects competition.

Mayor Kennedy opened the public hearing.

Mr. Jerry Jones, the applicant for this project, requested, and was given, eight minutes of speaker time. Mr. Jones stated that he is asking the Council for approval of his currently allotted Measure P five-lot subdivision; and he also wants to include four other lots, and build them as duet homes. He stated these would be more affordable than single family homes. He stated he wants to include the four existing lots he

has with the five he was given under Measure P, for a total of nine. He believes that the State Map Act and Measure P, as written today, state that the existing lots of legal record, which these are, are exempt from the subdivision. He stated they can never, ever, be part of a subdivision. He stated it can't be a nine-lot subdivision, because the State Map Act says this can't be done. He has submitted this information to the City Attorney, and feels that the courts have supported this.

Mr. Jones stated that he feels this is a great project for downtown. It will clean up a blighted area, and is located within walking distance to downtown, schools and trains. Affordable homes will be built in the \$400,000 range. He stated he has already spent \$200,000 on sewer and water improvements, and has not asked the Redevelopment Agency for one penny of funds.

Mr. Jones provided the Council with copies of an e-mail that Ralph Lyle sent Jim Rowe dated 9/25/01. Attached to it was a copy of the staff report for the Planning Commission agenda of 9/25 recommending approval of this project as a nine-lot subdivision. He felt that there has been collusion going on regarding his project, and that Mr. Rowe and Mr. Lyle were grasping at different scenarios on how to turn down this project. He stated that he hopes that Council will put a stop to this, if not for him, then for others. He stated he felt they took his due process away, because he had a staff recommendation for approval, but after the e-mail, the staff recommendation changed to denial. He hoped to get this resolved tonight, and feels he has done everything he can possibly do. Stated that he did not ask for the RPD overlay, and that it was Joe Mueller who wanted that done; so he spent \$5,000 to get it done, just to try to move the process along. He submitted the RPD overlay, and it has been ignored, and not even discussed. Asked the Council to use common sense.

Mr. Jones reiterated that this would be a great project for downtown. He stated he is not asking them to do anything illegal because he feels his four existing lots of record are exempt under Measure P.

Mr. Jones stated he had one final statement to make. If he gave back his 5 allocations, he could go in tomorrow and pull a permit and build his four existing lots out with single family homes. The City Planning Department would then give those 5 allocations to another developer who would build them, but not in the downtown area. The nine homes would be built, but not in downtown. This is the last piece of multi-family housing in the downtown area that he knows about.

Mayor Kennedy asked to see a map showing the original layout for the 5 unit project submitted under Micro Measure P competition. Then he asked Mr. Jones why he changed from the original map.

Mr. Jones stated he wanted to do a lot line adjustment. He could do it by recording a legal description or by map. He chose to do this by map. He elected to show the four lots on this map, even though they are not part of the subdivision. These are on an adjacent piece of land, owned by someone else, but not part of his subdivision. The adjustment of the lot lines caused the re-arrangement of the layout of the Measure P allocations.

Mayor Kennedy asked the City Attorney if Mr. Jones could legally change the lot lines.

City Attorney Leichter responded that this is an instance of the same word being used in the Subdivision Map Act and Measure P, but it is a case of mixing apples and oranges. A Subdivision Map for the purpose of the Map Act is any division of the lands for profit. This is clearly a division of lands for profit. A lot line adjustment is allowed without the filing of a subdivision map, only if there are no new parcels created. This has nothing to do with the Measure P exemption. The only way to get this project to add up to nine parcels, is if the Measure P exemption is included. That has nothing to do with the Subdivision Map Act. Since the applicant is creating new parcels, he is not entitled to do a lot line adjustment; and must file a subdivision map. That does not preclude him from using this project to compete under Measure P, once he files the subdivision map. He is arguing that he is exempt from Measure P, but he is using the same parcels upon which he submitted his Measure P application. The fact is that one is either exempt from Measure P or going through Measure P, and the same parcels can't be used for both. Parcels which are exempt, are parcels which are not part of a potentially larger subdivision. In looking at his Measure P application, it is clear that this is part of a potentially larger subdivision, so we don't think that the exemption policy applies. Even if the exemption policy did apply, when staff compares this project to the Exemption Policy, they can only determine eight exemptions, and not the 9 requested by Mr. Jones. She referred the Council Members to the handout she provided on the Residential Development Control System, and the Council Policy on Residential Development Control System Exemption.

Ms. Leichter also noted that the case that Mr. Jones cited earlier was not comparable, because the lot numbers did not change. There were no new lots created in that case.

Mr. Jones, stated that he does not understand where they are getting more lots. Stated he is not trying to create more lots. Stated that he did not know if they would be able to get it resolved tonight, and that it might takes the courts to get it resolved. He hoped it would not come to that.

There being no further comment, the public hearing was closed.

Council Member Tate, stated that he feels that this project would be a benefit to downtown, but feels that they should have competed for nine lots, because when you compete for micro Measure P, you are saying that this is the ultimate build out. He would like to see an application submitted for this as another project.

Mayor Kennedy asked if Council Member Tate was suggesting that Mr. Jones not proceed with the five allocations he has received, but to come back and compete under Measure P for the entire project?

Council Member Tate responded yes. If the applicant wants to do more units, he should apply for it. If he wants to build just five units, he can go ahead, but if he wants to build more, he has to compete.

Council Member Sellers, concurred. He stated that he appreciates Mr. Jones's project. It makes sense for downtown, and these are relatively affordable units. Also felt it made more financial sense for the applicant to do it that way. He encouraged Mr. Jones to go back and make it a nine unit project application. Council Member Sellers felt that the assets it would bring in terms of location and affordability would make the project likely to be approved. He stated that the Council needed to concur with the Planning Commission on this item.

Council Member Carr asked if there were some way to take advantage of some of the time that Mr. Jones had already spent on this project. He feels that it would be a great project in that part of town. Asked if there was some way to make it possible to proceed with the allotments he already has received, and then compete for the balance. This would allow him to phase in his construction and would not put him any further behind, since it has already been going on for so long.

Mr. Rowe stated that Mr. Jones can apply for an extension to preserve his current allotment. The Planning Commission is prepared to approve a five-lot map, since he has been approved under Micro Measure P. He would have to come back later to develop the rest of his property.

Mayor Kennedy asked Mr. Jones why he would not be willing to do that.

Mr. Jones, stated that he feels that his exemptions are not being recognized. Cited other instances of exemptions being given. He does not want to spend any more on Measure P fees. Stated he felt he was being discriminated against. Stated that the other lots are in his wife's name, and that he feels she is being forced by the Planning Commission to include her parcels in this development.

Mayor Kennedy again asked Mr. Jones why he would not do what was being suggested by staff.

Mr. Jones responded that he has every intention of coming back and going through Measure P again. Feels that he would be trading four lots for five and would have to pay high Measure P fees again. Felt it did not make any sense to spend \$100,000 to get one extra unit.

Mayor Kennedy asked staff if Mr. Jones could get an additional 14 units approved if he re-applied under Measure P.

Mr. Rowe said that it was conceivable that the applicant could get an additional 14 units if he re-submitted under Measure P, for an overall total of 19 units.

Mayor Kennedy stated that Mr. Jones has some other options that would work, and that he would like to see a good project located there. He also stated that he appreciated what Mr. Jones was trying to do, but felt that the City needs to stick with the legal advice that has been given.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council by a vote of (4-0-1) AYES: Carr, Tate, Sellers, Kennedy; NOES: None; ABSTAIN: Chang, **Adopted** the Resolution Denying the Zoning Amendment.*

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council by a vote of (4-0-1) AYES: Carr, Tate, Sellers, Kennedy; NOES: None; ABSTAIN: Chang **Adopted** the Resolution denying the Development Agreement.*

11B) SUBDIVISION APPLICATION SD 01-04: MCLAUGHLIN - JONES

Due to action taken on Item 11 A), the City Council **Took No Action**, thereby concurring with the Planning Commission's decision regarding denial of the subdivision map.

OTHER BUSINESS:

12) CITIES ASSOCIATION CITY SELECTION COMMITTEE APPOINTMENTS

Mayor Kennedy asked if there were any Council Members who wished to have their name submitted in nomination before the City Selection Committee to serve as a representative of the Cities Association on a board or commission.

Council Member Chang stated that she would like to be considered for the position of either Primary or Alternate representative for the ABAG Executive Board. She currently serves as alternate, and if the Primary position is not available, would like to continue to serve as an alternate.

Mayor Kennedy expressed his support of this nomination. He will draft a letter to the Cities Association, in support of this appointment, and asked Council Member Chang to provide a statement of qualifications to accompany his letter.

No other council member expressed interest in any of the positions.

Action: *City Council **Directed** City Clerk to Notify the Cities Association of Council Member Chang's Interest in Serving as representative to the ABAG Executive Board.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 8:50 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that the City Council approved the defense of the appeal in the San Jose Christian College lawsuit.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:15 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, OFFICE ASSISTANT II